

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Elm Creek
LLC for a Certificate of Need for a Large
Energy Facility, a 100.5 Megawatt Wind Farm

ISSUE DATE: July 19, 2007

DOCKET NO. IP-6631/CN-07-789

ORDER EXTENDING TIME FOR
COMMISSION ACTION AND PERMITTING
EXPEDITED FILING

PROCEDURAL HISTORY

On June 12, 2007, Elm Creek LLC (Elm Creek or the Company) filed an application under Minn. Stat. § 216B.243 for a certificate of need to construct a 100.5 megawatt wind energy conversion system in Jackson and Martin counties. On June 12, 2007, the Company also filed a request for exemption from certain data requirements in the certificate of need rules and a request for a variance to rule provisions requiring a 45-day interval between filing an exemption request and filing a certificate of need application.¹

On June 22, 2007, the Commission issued a notice to potentially interested persons seeking comments on the completeness of the application and on the request for exemptions from data requirements. Initial comments were due on July 6 and reply comments on July 16.

On July 12, the case came before the Commission for initial procedural determinations.

FINDINGS AND CONCLUSIONS

The Commission has examined the Company's certificate of need application, its application for exemption from certain data requirements, and its request to file these two applications simultaneously, instead of 45 days apart, as the rules require. The Commission concludes that the public interest supports permitting the two applications to be filed together and requires extending the time lines for determining the completeness of the certificate of need application and for acting on the exemption requests.

¹ Minn. Rules, part 7849.0200, subp. 6.

These decisions are explained below.

I. Legal Standard For Varying Rules

All three actions taken today require variances to Commission rules. Under Minn. Rules 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with any standards imposed by law.

II. Expedited Filing Permitted

The Company filed its exemption requests on the same date that it filed its certificate of need application; the rules require a 45-day interval between filing exemption requests and filing a certificate of need application.²

The Company requested a variance from the 45-day requirement, arguing that the additional time could jeopardize its targeted in-service date of December 2008 and that the project fit squarely within clear legislative directives to increase utilities' reliance on renewable sources of energy.

The Commission will vary the rule requiring the 45-day interval, based on the following findings:

1. Enforcing the 45-day interval would impose an excessive burden on the Company by jeopardizing the targeted in-service date of the proposed wind generation facility.
2. Granting the variance would not adversely affect the public interest, but would serve the public interest by expediting consideration of a project that falls within a class of projects the Legislature has directed regulators and utilities to promote.
3. Granting the variance would not conflict with any standards imposed by law.

The Commission will therefore vary the requirement for a 45-day interval between the filing of exemption requests and the certificate of need application to which they relate.

² Minn. Rules 7849.0200, subp. 6.

III. Time Line for Acting on Exemption Requests Extended

The rules require the Commission to act on requests for exemptions from data requirements within 30 days.³ The Commission has reviewed Elm Creek's exemption requests and finds that their careful consideration will require more than 30 days.

While it is important not to burden the Company with unnecessary or unperformable filing requirements, it is equally important not to forgo information that will be needed once the case begins. The Commission has solicited comments from interested persons to help it avoid both hazards. Receiving and analyzing those comments will require this petition to remain open for more than 30 days.

The Commission will therefore vary the 30-day time line of Minn. Rules, part 7849.0200, subp. 6, making the following findings:

- (1) Enforcing the 30-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process.
- (2) Varying the 30-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process.
- (3) Varying the 30-day time line would not conflict with any other standards imposed by law.

The Commission will promptly review the comments of the parties and will act on the Company's exemption requests as soon as practicable.

IV. Time Line for Acting on Completeness of Application Extended

The rules require the Commission to determine within 30 days of filing whether or not a certificate of need application is substantially complete.⁴ The Commission has reviewed Elm Creek's application and finds that careful consideration of its completeness will require more than 30 days.

To avoid delay and inefficiency as the case progresses, it is critical to begin with a substantially complete filing. The Commission has therefore solicited comments on completeness from interested persons. Receiving, analyzing, and acting on those comments will require more than 30 days from the date the application was filed.

³ Minn. Rules, part 7849.0200, subp. 6.

⁴ Minn. Rules 7849.0200, subp. 5.

The Commission will therefore vary the 30-day time line of Minn. Rules 7849.0200, subp. 5, making the following findings:

- (1) Enforcing the 30-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process.
- (2) Varying the 30-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process.
- (3) Varying the 30-day time line would not conflict with any other standards imposed by law.

The Commission will promptly review the comments of the parties and will determine whether or not the application is substantially complete as soon as practicable.

ORDER

1. The Commission hereby varies Minn. Rules, part 7849.0200, subp. 6, to extend the time for Commission action on the Company's request for exemption from specific data requirements.
2. The Commission hereby varies Minn. Rules 7849.0200, subp. 5 to extend the time for determining whether the certificate of need application is substantially complete.
3. The Commission hereby varies Minn. Rules 7849.0200, subp. 6, to permit the simultaneous filing of the Company's request for exemptions from data requirements and its certificate of need application.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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